

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 25, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

06od-107

Oahu

SALE

Sale of Reclaimed Lands to Robert M. Fox, Waialae-Iki,
Honolulu, Oahu, Tax Map Key: 3-5-22:05, seaward.

APPLICANT:

Robert M. Fox, married, tenant in severalty, whose business and
mailing address is 4224 Waialae Avenue, Suite 5-395, Honolulu,
Hawaii 96816.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waialae-Iki situated at Waialae-
Iki, Honolulu, Oahu, identified by Tax Map Key: 3-5-22:05,
seaward, as shown on the attached map labeled Exhibit A.

AREA:

4.0 square feet of seawall, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

CURRENT USE STATUS:

Unencumbered with encroachments.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide documentation that he is the owner of the property abutting the subject reclaimed land.
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the reclaimed land;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Pay for the costs of public notice pursuant to section 171-16(d).

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REMARKS:

Pursuant to Section 171-53(b), HRS, the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds that its disposition is not prejudicial to the best interests of the State, community or area in which such reclaimed land is located. Further, if the reclaimed land was filled in or made with the approval of government authorities and not otherwise filled in or made contrary to the public interest, the reclaimed land is valued as submerged land. Otherwise, it must be valued as reclaimed or fast land.

The applicant's consultant submitted all the necessary documents to

the Office of Conservation and Coastal Lands' (OCCL) office for review when the seawall encroachment was discovered. On May 10, 2006 the OCCL responded to the minor encroachment by recommending an easement be granted and noting that the seawall was built prior to 1964, the year the conservation law went into effect (see Exhibit B). A current survey map showing the subject area is attached as Exhibit C.

Mr. Fox provided evidence of the subject land in a 1952 aerial photo and a 1958 City and County sewer line survey map, both of which show the seawall. There is no evidence of any government authorized building permit. The seawall appears to be the same structure, as depicted in the photo and survey map, i.e. it has not been extended from its original location. Therefore, the 4 square feet of reclaimed land by the subject seawall may be sold pursuant to 171-53(b), as mentioned above. The applicant elected to purchase the subject State land instead of obtaining an easement.

A request for comments was made to various agencies. The Dept. of Hawaiian Homes Lands, Office of Hawaiian Affairs and the City and County's Dept. of Planning and Permitting responded by indicating they had no comment, however there were no responses received from any other agencies.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff recommends no fine, as the subject encroachment is less than 100 square feet.

Further, staff is recommending that the Board authorize the acceptance of a deposit from the applicant. This will allow the applicant to process the shoreline certification, which is needed for the Applicant to pursue a building permit application. As standard practice, staff does not allow a shoreline certification to be processed until all encroachments have been resolved through the full execution of legal documents or removal of the encroachments. In the past, shoreline certifications or other approvals were released prior to full document execution and staff found it difficult to compel the Applicant to execute the documents and make payment. Therefore, staff offers this alternative method of collecting a deposit to enable the applicant to pursue permits and approvals with less risk that the applicant will not execute the documents. While such a deposit does not completely ensure that the documents will be executed, it does show a strong commitment by the applicant to enter into an agreement with the State.

The Appraisal Section has cursorily estimated the easement consideration to be \$1,260.00. With fees, the total estimated deposit amount is \$1,315.00. The actual consideration will be determined by a full appraisal. Upon execution of the legal

documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposit amount is more than the total, then the Applicant shall be reimbursed any difference (and vice versa). If the Applicant does not execute the document, the Applicant shall be required to remove the encroachments to the satisfaction of the Department or to forfeit the deposit in full, which shall be used to remove the encroachment.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area in which the subject reclaimed land is located.
2. Authorize the sale of the subject reclaimed land to Robert M. Fox covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the County subdivision process;
 - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Department to accept a deposit in the amount of \$1,315.00 from the applicant pursuant to the conditions

August 25, 2006

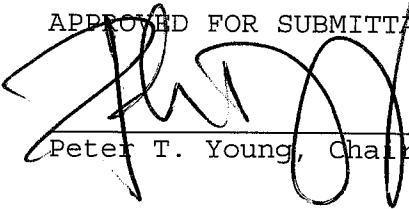
set forth in the Remarks section above for an estimated
consideration.

Respectfully Submitted,



Al Jodar
Land Agent

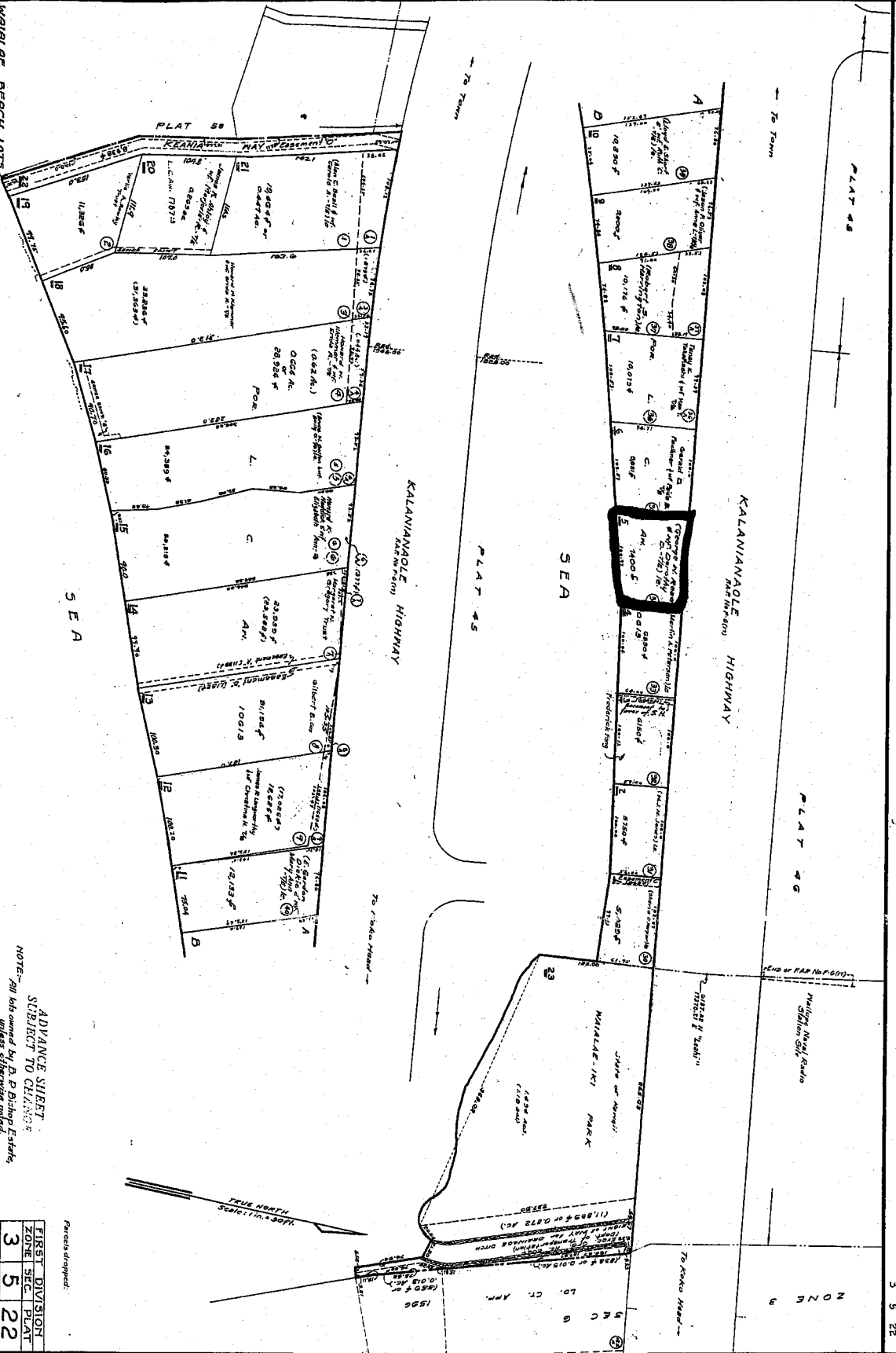
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Dwg. No. 1070
 By: PLP 11/30
 Source: Sanborn Maps Derwent

WAIKALAE BEACH LOTS



ADVANCE SHEET
 SUBJECT TO CHANGE
 NOTE: All lots owned by D. P. Bishop Estate, unless otherwise noted.

FIRST DIVISION
ZONE SEC. PLAT
3 5 22
CONTAINING PARCELS
Scale 1 in. = 50 ft.

EXHIBIT "A"

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN A. NAKANO
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR.OCCL::CC

Shoreline Encroachment: OA-06-11

MAY 10 2006

OGod-107

Wesley T. Tengan (agent)
PO Box 240953
Honolulu, Hawaii 96824

Mr. Tengan:

SUBJECT: Shoreline Easement Application for 5005 Kalaniana'ole Hwy, Honolulu,
Hawaii, TMK (1) 3-5-022:005.

The Office of Conservation and Coastal Lands (the OCCL) has received your shoreline easement application for TMK: (1) 3-5-022:005.

Documents provided indicate that this seawall was in existence prior to October 1964. After review, the OCCL recommends that the four square feet of encroaching material on the subject property's seawall be granted an easement. This encroaching portion of the seawall is insignificant in comparison to the wall itself. Removal of the encroaching material will not affect either the coastal processes or the upland region. Removal of the encroaching material would not benefit the State or its resources.

Should you have any questions regarding this letter, please contact Chris Conger, Sea Grant Extension Agent, at (808) 587-0049.

Sincerely,

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

cc: Land Division

EXHIBIT 44 B 77

05/09/2006

KALANIANA'OLE HIGHWAY

1/2" pipe

PARCEL 4

261°55'50" → 67.00

Tile wall

Nail

Tile wall

100.00

171°55'50" ↑

PARCEL 5
7400 SQ. FT.

343°57'30"

Tile

wall

100.98

EASEMENT A
4 SQ. FT.

81°55'50" ← 81.00

Tile wall

1/2" pipe

PARCEL 6

Iron pin

Tile wall

SHORELINE FOLLOWS ALONG VEGETATION LINE
AS LOCATED ON NOVEMBER 10, 2005

S E A

342°54' 2.89

343°23' 12.86
344°05' 11.24

344°50' 6.02

358°41' 0.27

N 6012.55
E 16938.37
△ LEAHI



**EASEMENT MAP
DESIGNATION OF EASEMENT A
IN FAVOR OF PARCEL 5**

Waialae-Iki, Honolulu, Oahu, Hawaii

Date: November 10, 2005

Tax Map Key: (1)3-5-22:5

Owner: Bob Fox

This work was prepared by me or
under my supervision

WESLEY T. TENGAN
LICENSED PROFESSIONAL LAND SURVEYOR
Certificate Number 6958

EXHIBIT "C"